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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO

HONORABLE JOSEPH C. SPERO, U.S. MAGISTRATE JUDGE

- - -

HUAWEI TECHNOLOGIES COMPANY, LTD., )  
HUAWEI DEVICE USA, INC., and )  
HUAWEI TECHNOLOGIES USA, INC., )

Plaintiffs and )  
Counterclaim Defendants, )

vs. )

SAMSUNG ELECTRONICS COMPANY, LTD., )  
SAMSUNG ELECTRONICS AMERICA, INC., )

Defendants and )  
Counterclaim Plaintiffs, )

and )

SAMSUNG RESEARCH AMERICA, )  
Defendant, )

vs. )

HISILICON TECHNOLOGIES COMPANY, LTD., )  
Counterclaim Defendant. )

*TRANSCRIPT OF THE OFFICIAL  
ELECTRONIC SOUND RECORDING 2:34 P.M. - 2:48 P.M.  
CASE MANAGEMENT CONFERENCE  
JANUARY 19, 2018  
SAN FRANCISCO, CALIFORNIA*

(APPEARANCES ON PAGE 2)

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1                   *SAN FRANCISCO, CALIFORNIA; SEPTEMBER 26, 2017*

2                   --o0o--

3                   (TRANSCRIBER'S NOTE: Due at times to counsels'  
4 failure to identify themselves when speaking, certain speaker  
5 attributions are based on an educated guess.)

6                   --o0o--

7                   THE COURT: You're back.

8                   MS. MAROULIS: Good afternoon, your Honor.

9                   THE COURT: Appearances, please.

10                  MR. BETTINGER: Good afternoon, your Honor. Mike  
11 Bettinger for plaintiff Huawei.

12                  MS. MAROULIS: Good afternoon, your Honor. Victoria  
13 Maroulis with Charles Verhoeven and Sam Stake for Samsung.

14                  MR. BETTINGER: I neglected to mention my colleague,  
15 Curt Holbreich is also here.

16                  THE COURT: I noticed. All right. Thank you very  
17 much.

18                  So taking a step at a time, the first item on my agenda is  
19 to add the Galaxy Note 8. My inclination about that is that  
20 this is very late in the process, that there's very little time  
21 for discovery left, that there are already many products in the  
22 case, and that the -- there is some chance that this will  
23 require significant additional discovery and perhaps other  
24 things, given that the build is different for the broadband  
25 processor in this particular model than the other broadband

1 processors by the same company.

2 That's my inclination. Any thoughts?

3 MR. BETTINGER: Yes, your Honor.

4 The fact is that we first requested this back in  
5 September. There has been a long process of back and forth,  
6 and we were finally told no, which is what prompted the motion.  
7 We thought we would be able to work this out.

8 The chip in question is a Qualcomm chip. It's the same  
9 chip for the S8 and the S8+ that Qualcomm has still not  
10 produced code for either one of those either in this case.  
11 We're dependent -- there's two chips --

12 THE COURT: Yeah. I understand that problem, yes.

13 MR. BETTINGER: -- at issue. This is Qualcomm, and so  
14 they haven't even produced the S8 and the S8+. So there's no  
15 prejudice that it hasn't been produced, it would come along  
16 with this.

17 THE COURT: Well, no, it would be prejudice because it  
18 might be a third different build's software, right?

19 MR. BETTINGER: Um --

20 THE COURT: No.

21 MR. BETTINGER: -- not from Qualcomm.

22 THE COURT: I see.

23 MR. BETTINGER: It would be the underlying chip is the  
24 underlying chip.

25 THE COURT: I see. I see. Okay.

1 Did you want to say something about that?

2 MS. MAROULIS: Your Honor, we agree that it's way too  
3 late to add any products. We're less than two months away from  
4 the close of discovery. The trial is around the corner in  
5 December. We've been working very hard to narrow the case, and  
6 one of the reasons --

7 THE COURT: Only in a patent case could somebody say  
8 in January the trial is around the corner in December. You --  
9 you know, you've probably litigated a lot in San Jose, I bet.

10 MS. MAROULIS: I have a few -- I have a few cases  
11 there, your Honor.

12 THE COURT: Yes. It's --

13 MS. MAROULIS: So basically, if you look at the cases  
14 in this district, if it's that little time left to the close of  
15 discovery, with two or three months, typically courts do not  
16 add products in. The only case that Huawei relies on is  
17 actually the *Apple Samsung* case from San Jose, but there the  
18 addition of the product was early in the case. It was before  
19 the Markman hearing, before -- way before close of discovery,  
20 and almost two years before trial.

21 Here we would be adding a whole new product very late into  
22 the game, and, as your Honor points out, it is a different  
23 build ID. We're going to need to do more additional work.  
24 It's going to prejudice Samsung. We worked very hard to narrow  
25 the case. We actually have reached an agreement on case

1 narrowing which was the subject of our dispute last time we  
2 were before your Honor.

3 THE COURT: Right.

4 MS. MAROULIS: We're very pleased with ourselves that  
5 the case is getting to where it should be, which is closer.

6 THE COURT: As well, you all should be pleased with  
7 yourselves.

8 MS. MAROULIS: So, your Honor, respectively --

9 THE COURT: On that part -- on that part.  
10 There's a lot of stuff I wouldn't be pleased with  
11 yourselves.

12 MR. BETTINGER: Pleased and not pleased.

13 THE COURT: Exactly.

14 MS. MAROULIS: So, your Honor, we don't think it's  
15 appropriate to add any more products at this stage. That  
16 window has long closed, and we should move towards the trial  
17 and keep narrowing things in the --

18 THE COURT: Do you want to speak to his point though?  
19 His --

20 MS. MAROULIS: We've already started reviewing the  
21 third party source code that is at issue. So we'd have to go  
22 back and review code, and get more information, and create new  
23 arguments about this different build ID.

24 THE COURT: That's the argument.

25 MR. BETTINGER: The fact is Qualcomm has not produced

1 S8 or S8+ because they have to notify us when they do. And  
2 they have just not produced it yet. So there's been no review  
3 of that code, your Honor.

4 We know that from Qualcomm, we inquired again this week,  
5 they said they would have to get back to us next week as to  
6 when it would be produced.

7 MS. MAROULIS: Your Honor, it is correct the code has  
8 not been produced yet. But it doesn't change the fact that we  
9 need to do a lot more additional work now that we should be  
10 focused on -- focusing our arguments based on the discovery.

11 THE COURT: Those are the arguments -- that's the  
12 arguments.

13 MS. MAROULIS: Yes.

14 THE COURT: That it's additional work to be done on a  
15 different build of the chip.

16 The question is whether that's significant?

17 I think it's too late. I'm going to -- at some point I  
18 have to cut this off so we can get a trial done. So I'm not  
19 going to add the Note 8 to the case.

20 Now, having said that, I'm tickled pink that you have an  
21 agreement. I've got to the say that I want you to work on  
22 further narrowing the number of products that we're actually  
23 going to try here.

24 I'm -- this is a fine schedule. I'm not sure we -- and  
25 the distinction between five or ten products, I'm not sure how

1 significant that is, and it depends on a lot of things, but to  
2 the extent that you can do further narrowing, we will -- and  
3 I'd like you to work on that between now and the next case  
4 management. We'll have a better ability to meet the goal that  
5 Judge Orrick set for us, which is try this case in two weeks.  
6 If you don't, then I may have to do something arbitrary. I'd  
7 rather not. It doesn't -- it's not in anyone's interests for  
8 judges to act arbitrarily, so that's your task for the next  
9 CMC, further narrow the products, number one.

10 Number two, I want -- I'm ordering the parties to  
11 negotiate a representative product agreement. I -- you know,  
12 the answer given by Samsung that oh, we've done this already,  
13 so therefore we don't have to do that, doesn't speak to me.  
14 You can further make this an efficient trial by negotiating a  
15 representative products agreement.

16 Now, whether one can be negotiated, generally depends on  
17 the science, facts on the ground, but if the facts on the  
18 ground suggest that there should be one, then I want you to  
19 negotiate it. So I want you to put that effort in.

20 I know that it's not an insignificant effort to negotiate  
21 such things and involves more than just lawyers, but I think  
22 that's an important next step to make this trial more  
23 efficient.

24 MR. BETTINGER: Thank you, your Honor.

25 THE COURT: That's number two, or number three.



1           The plaintiffs want to file a motion to amend infringement  
2 contentions to reflect information learned in discovery?

3           What's that about?

4           MR. BETTINGER: There's review of source code going on  
5 now. There's source code depositions scheduled for the next  
6 two weeks, I think, in Hong Kong, and then in Seoul in  
7 February.

8           THE COURT: Yeah.

9           MR. BETTINGER: It's standard practice that once  
10 you've completed that discovery, you then go in and amend your  
11 contentions --

12          THE COURT: Do you want to put --

13          MR. BETTINGER: -- because the way this was -- I'm  
14 sorry.

15          THE COURT: -- to put in the source code citations?

16          MR. BETTINGER: Yes. The way this case was pled was,  
17 there's an acknowledgement that the phones practice the  
18 standard and therefore practice each of the -- the allegations  
19 right now are based on admissions of practicing a standard,  
20 this solidifies there's underlying code that confirms that.

21          THE COURT: Are you going to oppose that?

22          MS. MAROULIS: Your Honor, we haven't heard that  
23 specific proposal before.

24          THE COURT: Right.

25          MS. MAROULIS: I need to discuss with the team.

1 THE COURT: Yeah.

2 MS. MAROULIS: I mean, typically the guidance in the  
3 local patent rules, which is if there's good cause and if it's  
4 timely, then parties don't have much chance to oppose.

5 So we just need to understand because the patents go both  
6 ways.

7 THE COURT: Yes. That's how it works.

8 MS. MAROULIS: Yes.

9 THE COURT: What's sauce for the goose, et cetera.

10 MS. MAROULIS: Right. So if it's okay with your  
11 Honor, now that we understand what they want to do, which is to  
12 add source code sites --

13 THE COURT: Yes.

14 MS. MAROULIS: -- and that's how I understand the  
15 scope of it, we'd like to discuss with them and with ourselves.

16 THE COURT: Yes. Meet and confer on it. If there's  
17 an issue, you know how to tee it up.

18 MR. BETTINGER: Sure.

19 THE COURT: The usual process.

20 MS. MAROULIS: Thank you, your Honor.

21 THE COURT: So what else is going on? When are we  
22 settling this case?

23 MR. BETTINGER: Well, so that's what I want to talk to  
24 you about.

25 THE COURT: Oh, good.

1 MR. BETTINGER: There was a decision two weeks ago in  
2 China on belated patents. The Court in China ruled on the  
3 infringement and validity of those. This is called a court of  
4 first impression, but also had to deal with the FRAND issues,  
5 and found that Samsung had delayed the negotiations and was in  
6 breach of that brand obligation. Huawei was not.

7 THE COURT: Mmmm-hmmm.

8 MR. BETTINGER: That kind of is a central theme in  
9 this case. It's really why this case was filed because we had  
10 been in negotiations for five years and not getting anywhere.

11 THE COURT: Mmmm-hmmm.

12 MR. BETTINGER: So your Honor had asked hey, if  
13 something comes along that might be a catalyst for discussions,  
14 I think this particular ruling, though it's not final --

15 THE COURT: Mmmm-hmmm.

16 MR. BETTINGER: -- there is what's called in China, I  
17 understand, a court of second impression, which is similar to  
18 our appellate court.

19 THE COURT: Yeah.

20 MR. BETTINGER: Though it sounds like maybe they can  
21 take evidence, I'm not sure, but that was a recent development.

22 THE COURT: Okay. That's interesting. That's  
23 interesting.

24 What's going on with that?

25 MR. VERHOEVEN: Your Honor, we're still getting

1 translations. It's all in Chinese.

2 THE COURT: Yes, of course.

3 MR. VERHOEVEN: But, your Honor may recall that one of  
4 our causes of actions -- an antitrust cause of action for this  
5 very conduct, it's -- we take this event very seriously. The  
6 notion that there's any sort of parity between what happens in  
7 Huawei's hometown in China versus our adversarial system, we  
8 take issue with, and -- so we're evaluating our options.

9 THE COURT: Well, it all depends on whose --

10 MR. VERHOEVEN: We consider this to be another event  
11 that's a violation of the antitrust claims that we've made.

12 I can't tell you what we're going to do about it. We're  
13 still looking at it. I still haven't read the translation yet  
14 of the --

15 THE COURT: Okay.

16 MR. VERHOEVEN: -- of the opinion. So it sounds like  
17 Mr. Bettinger has.

18 MR. BETTINGER: I have -- there's been some press  
19 reports. I was only describing to the Court what's --

20 MR. VERHOEVEN: So you haven't read it either then?

21 MR. BETTINGER: No. No. It's in Chinese character.

22 THE COURT: Yes. Right.

23 MR. BETTINGER: It's been summarized.

24 THE COURT: I would think this far into the case you  
25 would both read Chinese, but it's all right.

1 MR. BETTINGER: Well, I've got ni hao down, but --

2 THE COURT: Right. That's about it, right?

3 MR. VERHOEVEN: So anyway, your Honor, I agree with  
4 Mr. Bettinger. This is a significant event, but it's too early  
5 for us to say what we're going to do about it.

6 THE COURT: Okay. And my recollection is the trial is  
7 in November, is that when we set -- when did we --

8 MS. MAROULIS: December, your Honor.

9 THE COURT: December?

10 MR. VERHOEVEN: Yes.

11 MS. MAROULIS: December 3.

12 THE COURT: I can't remember what we set. December.  
13 Okay.

14 Well, you know, if there's a time to start talking about  
15 settlement, it's probably coming up relatively soon, you know.

16 When's the summary judgment date?

17 MR. BETTINGER: We have expert reports, I believe, in  
18 May is when we start filing summary judgment.

19 THE COURT: I see.

20 THE CLERK: The motion hearing is set for August 8.

21 THE COURT: August.

22 MR. BETTINGER: Judge Orrick mentioned that he wanted  
23 plenty of time on those motions prior to the hearing --

24 THE COURT: Yes. I'm sure.

25 MR. BETTINGER: -- to file them.

1           There are depositions coming up of the main -- the folks  
2 who negotiated back and forth between Samsung and Huawei.

3           THE COURT:   Okay.

4           MR. BETTINGER:   I think end of March -- end of  
5 February.

6           MR. VERHOEVEN:   They're still being negotiated.   I  
7 have a trial that I have conflicts with, but we're working it  
8 out together.

9           MR. BETTINGER:   Yeah.   But that gets the principals in  
10 the room.

11           THE COURT:   Well, I don't know.   I'm not going -- I'm  
12 not in the practice of forcing people into a room anymore  
13 unless they agree to be forced into a room to discuss things,  
14 but it seems to me that you're starting -- you're -- over the  
15 next few months you're going to start to develop a body of  
16 information from the depositions and from the experts that will  
17 give you a little better picture of the case, and hopefully  
18 that means you're in a better position to have discussions.

19           I appreciate that in a case that is, you know, maybe not  
20 World War III, but World War I --

21           MR. VERHOEVEN:   Wait a minute, that was a bad war,  
22 your Honor.

23           THE COURT:   It was a bad war.   They're all bad wars.

24           MR. VERHOEVEN:   I was just reading about it.

25           THE COURT:   We can call this the conflict then instead

1 of a war.

2 MR. VERHOEVEN: Yes. Thank you.

3 THE COURT: For those of us of a certain age. You  
4 know, it may not be possible and that's fine. That's what  
5 sometimes happens. This may just being one piece in a puzzle,  
6 but think about that and let's talk about that also at the next  
7 case management, when is the right time to have a discussion.

8 MR. BETTINGER: All right. Thank you, your Honor.

9 THE COURT: All right. So the next case management  
10 will be -- I don't know.

11 THE CLERK: How far out do you want?

12 MR. BETTINGER: May 4.

13 THE COURT: Yeah. I think --

14 THE CLERK: May 4, 90 days?

15 THE COURT: You know you're into the --

16 MS. MAROULIS: Your Honor, I'm out of town that day,  
17 but if that's the date that's convenient to the Court, I can  
18 send someone else.

19 THE COURT: Send someone else.

20 MS. MAROULIS: Sure.

21 THE COURT: Would that be all right?

22 MS. MAROULIS: Absolutely.

23 THE COURT: May 4th, 2:00. Give me an updated  
24 statement a week in advance and we'll talk.

25 Is there anything else you'd like to address today?

1 MR. BETTINGER: Not for Huawei, your Honor.

2 MS. MAROULIS: Not for Samsung, your Honor.

3 THE COURT: Great.

4 MS. MAROULIS: Thank you.

5 THE COURT: Thank you all.

6 MR. BETTINGER: Thank you very much for your time,  
7 your Honor.

8 THE COURT: Thanks.

9 (Whereupon the matter concluded at 12:48 p.m.)

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10 I further certify that I am neither counsel for, related  
11 to, nor employed by any of the parties to the action in which  
12 this hearing was taken; and, further, that I am not financially  
13 nor otherwise interested in the outcome of the action.

14  
15 ***/s/ VICTORIA L. VALINE***

16 \_\_\_\_\_  
17 Victoria L. Valine, CSR 3036, RMR, CRR  
18 January 30, 2018  
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